

MINUTES OF THE SOLID WASTE MANAGEMENT BOARD MEETING  
 Monroe County Solid Waste Management District  
 3400 Old State Road 37 South  
 Bloomington, Indiana  
 October 15, 2002

The meeting was called to order by Chairperson Jeffry Carter. Those present for all or part of the meeting were:

Ms. Linda Cosgrove  
 Mr. Rick Dyar  
 Mayor William Graham  
 Mr. Charles Himes  
 Mr. Jeff Langbehn  
 Dr. Stephen Wintermeyer  
 Mr. Howard Cundiff (Proxy, Indiana State Department of Health)  
 Mr. Craig Bair (Proxy, Department of Natural Resources)  
 Ms. Michaela Kendall, Proxy, Lieutenant Governor's Office  
 Ms. Deborah Albright, Board Counsel

A quorum was present.

In addition, the following IDEM staff members were present for all or part of the meeting:

Mr. Bruce Palin, Deputy Assistant Commissioner, Office of Land Quality  
 Ms. Lynn West, Operations and Information Branch, Rules, Planning and Outreach Section  
 Ms. Marjorie Samuel, Operations and Information Branch, Rules, Planning and Outreach Section  
 Mr. Vic Windle, Hazardous Waste Permits Section  
 Mr. Skip Powers, Underground Storage Tank Section

Chairperson Carter opened the meeting at 1:30 p.m.

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| 1. | Chairperson Carter asked for additions or corrections to the minutes of the Solid Waste Management Board meeting of September 17, 2002. There being none, <u>Mayor William Graham moved that the minutes be approved as presented and Mr. Rick Dyar seconded. The motion passed unanimously.</u>  | APPROVAL OF<br>MINUTES                |
| 2. | Chairperson Carter then asked Mr. Bruce Palin to address the Board. Mr. Palin began by thanking Mr. Mark Davis for hosting the Board meeting this year and for providing lunch. He then said that Ms. Lynn West would address the Board, but first, Chairperson Carter asked Mr. Palin to address some procedural issues regarding making motions and receiving public testimony. | ASSISTANT<br>COMMISSIONER-S<br>REPORT |

Mr. Palin said that the better way to proceed with making motions for adoption of rules, particularly preliminary adoption, would be to do so without conditions. Then, if more information or action is desired from IDEM staff, a separate motion requesting additional attention could be made. In this manner, any additional requirements of IDEM would be part of the official record. In addition,

when individuals present public testimony during the hearing, questions of staff and discussion should occur after testimony is presented and the hearing is closed. Chairperson Carter agreed and said that conducting Board meetings would be more orderly when following these procedures. Mr. Palin then asked Ms. West to address the Board.

Ms. West distributed the project list and noted that no new rules were added to the list. She also mentioned that there would not be a December Board meeting. She also distributed a list of 2003 meeting dates. She said that there were major changes in August 2003. Because of lack of meeting space that month, the date was moved to the fourth Tuesday of the month, August 26, 2003, and to Conference Center Rooms 4 and 5, rather than Conference Center Room A. Ms. West also thanked Mr. Davis for hosting the Board meeting and also apologized to the Board for confusion in locating the composting site for the morning tour.

Chairperson Carter then announced the rulemaking action:

\$ Preliminary adoption of amendments to rules of the Board at 329 IAC 9, hereafter known as the Underground Storage Tank Change Rule.

Chairperson Carter said that the Underground Storage Tank Change Update was included in the board packet and is available for public inspection in the Indiana Department of Environmental Management File Room, located on the 12<sup>th</sup> floor of the Indiana Government Center North. The draft rules were published in the June 1, 2002 Indiana Register at 25 IR 2900. Instructions were given to the public regarding offering oral statements and comments to the Board; the court reporter was affirmed.

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| <p>3. Chairperson Carter announced that amendments to rules of the Board at 329 IAC 9, the Underground Storage Tank Change Rule, would be considered for preliminary adoption. He introduced Exhibit A, the draft rule, into the record of the hearing. He then asked Ms. Lynn West to address the Board.</p> | <p><b>PRELIMINARY ADOPTION<br/>UNDERGROUND STORAGE<br/>TANK CHANGE RULE<br/>329 IAC 9</b></p> |
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Ms. West said that the rule was being changed to make technical corrections, enhancements and clarifications for staff and regulated community. Ms. West briefly reviewed the history of the rule and then explained the changes in detail that are made by the Underground Storage Tank Change Rule. Changes have been made to make the rule consistent with IC 13-12-3-2 that authorizes RISC. Changes have been made to make the rule consistent with federal rules. Several new definitions have been added and others have been modified. Professional standards have been updated to the most current standard obtainable. Clarifications have been made to sections on record keeping and reporting. Finally, Rule 6, closure, has been clarified. Ms. West said that in addition to the first and second notices, there have been public meetings with the regulated community to discuss draft language. For a verbatim account of Ms. West's remarks, please see pages 15 through 22 of the official transcript of this meeting. After brief questions from the Board, Chairperson Carter asked for public comment.

Ms. Maggie McShane, acting Executive Director, Indiana Petroleum Council, offered testimony and

distributed written comments on behalf of Mr. Mike Pitts, Indiana Petroleum Marketers and Convenience Store Association. Ms. McShane said that while they were not against preliminary adoption of the rule, they would reserve the opportunity to meet again to discuss differences. Ms. McShane asked that when there is a system in place, they would like to see electronically filed reports serve as the official filing and be relieved of submitting additional paper copies. Ms. McShane said that another item would be that inspections be announced in advance so that paperwork can in place at the proper site and possibly have additional staff available to assist. Lastly, Ms. McShane said they felt that the provision requiring removal of a tank with maintenance of 30% was arbitrary. If maintenance and repairs are performed according to standards in place, the integrity of the tank is not at risk. For a verbatim account of Ms. McShane's testimony, please see pages 25 through 32 of the official transcript of this meeting.

Chairperson Carter asked if there were questions from the Board regarding Ms. McShane's remarks. Mr. Jeff Langbehn asked what would constitute a fair amount of advance notice. Ms. McShane thought that a day or two would suffice in most cases. Chairperson Carter then closed the hearing and asked for Board action on the preliminary adoption of the amendments to the rules of the Board at 329 IAC 9, the Underground Storage Tank Change Rule.

Mr. Langbehn asked Lynn West if a tank is considered compromised after 30% repair has been reached. Mr. Skip Powers, Chief, Underground Storage Tank Section, answered, saying that since relining a tank is not permissible, the issue is how far can a tank be repaired with more lining until it is considered actually relined. Mr. Powers said he would like more discussion on the 30% repair rate. Mr. Himes inquired about the inspection process and how often they take place. Mr. Powers outlined how the two-part inspection takes place. After questioning from Mr. Himes, Mr. Powers indicated that the purpose of inspections would not be compromised by advance notice. In response to question from Mr. Himes, Mr. Palin said that part of the problem with electronic submittals of reports is that there isn't a signature verifying that the records are true and accurate -- there isn't the desired level of accountability. Mr. Palin also said that there needs to be work done with the technology so as to manage the receipt of information as well as its security. Mr. Himes asked about what Afix® means. Mr. Powers said that to fix a tank is to actually go in and actually stop a leak by repairing or fixing the system. Maintenance would not necessarily involve a leak. For a verbatim account of the discussion, please see pages 36 through 47 of the official transcript of this meeting.

Chairperson Carter then asked for a motion. Mr. Langbehn moved that the rule be preliminarily adopted as presented. Mr. Howard Cundiff seconded. The motion passed unanimously.

Prior to moving to the next agenda item, Chairperson Carter reminded IDEM staff of a request for a meeting with stakeholders regarding Underground Storage Tank Rule.

4. Chairperson Carter said that the nonrule policy document (NPD) "ARisk Integrated System of Closure, the RISC Users Guide, Chapter 2" would be presented. Chairperson Carter said that the NPD is available for public inspection, comment and copying in the file room of the Department of Environmental Management, 12<sup>th</sup> floor, Indiana Government Center North, Monday through Friday between the hours of 8:30 a.m. and 4:30 p.m. The NPD was presented by Vic Windle, Office of Land Quality, Hazardous Waste Permits Section.

Mr. Windle explained that the NPD being discussed was actually a chapter of the Risk Integrated System of Closure, otherwise known as the RISC Guidance that provides a framework for applying risk assessment concepts to the remediation of contaminated land and ground water. There are two volumes of the RISC Guidance, the Technical Guide and the User Guide. The NPD is a chapter in the User Guide devoted to the State Cleanup Program, the Leaking Underground Storage Tank Program, the Voluntary Remediation Program and the RCRA Program. The revision pertains to industrial closure. The revision allows IDEM to utilize restrictive covenant language. Please see pages 50 through 55 for a verbatim account of Mr. Windle's presentation.

There was lengthy discussion regarding whom these closure requirements actually apply to. Mr. Windle specified that this would apply to facilities that treat, store or dispose of hazardous waste (TSDs). Mr. Palin added that if contamination extends outside the property boundaries, successful industrial closure could not be obtained. There was also discussion about steel mills on Lake Michigan that have created boundaries by building up land through a build-up of slag being pushed into the lake. Mr. Langbehn suggested that rules should be more stringent where industrial sites border one of the Great Lakes (Indiana only borders Lake Michigan). See pages 55 through 66 of the official transcript of this meeting.

Public comment was presented by Mr. Mark Shere, attorney. Mr. Shere stated that the board has statutory authority to take action on a nonrule policy document. He asked to board to exercise that authority by asking IDEM to reconsider comments received and then reconsider the NPD before it becomes final. Mr. Shere stated that he felt there was conflict with statute regarding restrictive covenants, and that the NPD is actually being written like regulations (i.e., the use of the word *must* in the document) rather than as a guidance document. He also felt that with NPDs generally, IDEM typically doesn't respond to comments during the 30 days prior to an NPD becoming final. He concluded by asking the Board to ask IDEM review the chapter and provide feedback to interested parties and bring a revised document back to the Board.

Chairperson Carter asked Mr. Palin to respond. Mr. Palin said that it would be best to withdraw the NPD and bring it back at a later date after he had an opportunity to respond to Mr. Shere's comments. He wanted specifically to check for consistency with the statute. He also noted that the restrictive covenant modification was written in response to requests from the regulated community.

Mr. Dyar then asked if guidance could be prepared to let the Board know what role they would have regarding actions on nonrule policy documents. Chairperson Carter asked Deborah Albright, Board Counsel, to research this and report to the Board at the next meeting.

5. Chairperson Carter then moved to the next agenda item, OPEN FORUM  
 Open Forum. Chairperson Carter called on Mr. Mark Shere to address the Board. Mr. Shere's comments were confined to the Underground Storage Tank Change Rule. He said he was neither for nor against preliminary adoption, but simply wanted to make the following points.
  - ▶ The language was written too broadly, making it difficult to know when remediation is

necessary, what standards apply. He felt that inconsistent and ineffective decisions are created from this.

- ▶ He objected having to file paper copies when electronic reports are required.
- ▶ He felt that it was unclear where updates occurred for clarity and consistency.

Mr. Windle asked for the opportunity to address the Board over what he felt were misleading statements on the RISC Chapter 2 NPD presented previously in the meeting. Chairperson Carter said questions that were brought up have caused a step back from more discussion of that NPD.

Chairperson Carter brought up the issue of baghouse dust and response from IDEM. Mr. Palin indicated that he had not heard from Mr. Bennett since he wrote to him recommending a meeting to discuss his concerns.

Ms. Linda Cosgrove and Mr. Howard Cundiff commented on the NPD presented previously in the meeting. They felt that the word must was not troubling in its use in the NPD. Mr. Carter concurred.

5. Chairperson Carter adjourned the meeting at 2:58 p.m.

ADJOURNMENT

The next meeting will be January 21, 2003, at 1:30 p.m., at the Indiana Government Center South, Conference Center Room A, 402 West Washington Street, Indianapolis, Indiana 46204.

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CHAIRPERSON

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TECHNICAL SECRETARY